

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EMPLOYEE PAINTERS WELFARE) Case No.: 2:09-cv-02208-GMN-GWF
TRUST, et al.,)

ORDER

Plaintiffs,
vs.
ATLAS PAINTING & DRYWALL, LLC,
et al.,
Defendants.

Before the Court is Plaintiffs' Motion to Renew Motion for Summary Judgment (ECF No. 87). Defendant, Travelers Casualty and Surety Company of America ("Travelers"), filed a Response on April 8, 2011 (ECF No. 88). Plaintiffs filed a Reply on April 12, 2011 (ECF No. 89).

Plaintiffs and Defendants, Atlas Painting & Drywall, LLC, Atlas Building & Development, LLC and Keith Tubin (“Atlas Defendants”), stipulated to a settlement agreement on February 8, 2011 (ECF No. 78). Pursuant to the terms of the settlement, the parties asked the Court to stay the case while the Atlas Defendants performed certain acts. (*Id.* ¶ 2). The parties also agreed that Plaintiffs’ Motion for Summary Judgment (ECF No. 42) should be dismissed without prejudice. (*Id.* ¶ 3). A Judgment by Confession (“Judgment”) was obtained as a result of the settlement negotiations and was entered in favor of the Plaintiffs and against Atlas Defendants and Keith Tubin. (ECF No. 83). Travelers was not involved in the settlement negotiations or a party to the Judgment.

Under the terms of the Judgment, the Atlas Defendants were required to make

1 recurring monthly payment to the Plaintiffs. (Judgment ¶ 4, ECF No. 84). The Atlas
2 Defendants failed to pay the first payment under the Judgment. Plaintiffs caused a Notice
3 of Default to be sent to the Atlas Defendants on March 7, 2011.¹ The Atlas Defendants
4 failed to cure and the Judgment was filed and entered as a Judgment of the Court on
5 March 21, 2011 (ECF No. 84).

6 Plaintiffs ask the Court to renew the Motion for Summary Judgment as was agreed
7 upon by the parties in the event of default and failure to cure under the terms of the
8 Settlement. (Stay Order ¶ 3, ECF No. 78). The Motion for Summary Judgment has been
9 fully briefed at Docket Nos. 43, 61 and 65.

10 Travelers does not oppose the Motion to Renew. However Travelers opposes
11 Plaintiffs' extraneous and additional arguments on pages 5 through 7 of their Motion to
12 Renew. Travelers explains that if the Motion for Summary Judgment has been fully
13 briefed and ready for a decision there is no need for the extra argument added to the
14 Motion to Renew. Travelers moves the Court to either strike or disregard the arguments.

15 The Court will not strike the arguments put forth by Plaintiffs in their Motion to
16 Renew. Travelers had the opportunity to respond to the arguments Plaintiffs have put
17 forth and accordingly did in their Response (ECF No. 88). Therefore the Court finds it
18 unnecessary to strike Plaintiffs' arguments.

19 IT IS HEREBY ORDERED that the Court GRANTS Plaintiff's Motion to Renew
20 Motion for Summary Judgment (ECF No. 87). Accordingly the Court will take the

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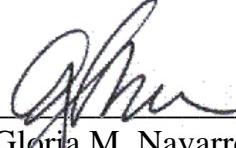
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25 ¹ Although Plaintiffs claim that the Notice of Default is attached as Ex. 1 to their Motion, it does not appear on the record.

1 Motion for Summary Judgment (ECF No. 43), the Response (ECF No. 61) and the Reply
2 (ECF No. 65) under submission.

3 DATED this 19th day of April, 2011.

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6 Gloria M. Navarro
7 United States District Judge
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